

**P O R T E R | S C O T T**

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*(Exempt from Filing Fees Pursuant to Government Code § 6103)*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

XAO THAO,

Case No. 2:23-cv-02563-DJC-CKD

Plaintiffs,

**DEFENDANT COUNTY OF SISKIYOU'S  
AMENDED ANSWER TO PLAINTIFF'S  
COMPLAINT**

v.

COUNTY OF SISKIYOU, and DOES 1,  
THROUGH 50,

Defendants.

Complaint Filed: 11/06/2023

Defendant COUNTY OF SISKIYOU hereby submits the following Amended Answer to the  
Complaint filed by Plaintiff XAO THAO as follows:

**PRELIMINARY STATEMENT**

1. Answering the section identified as "Preliminary Statement" at p. 1:17-24, this answering  
Defendant lacks sufficient information or knowledge to enable it to answer the allegations contained in  
this paragraph, and basing his denial on this ground, generally and specifically denies all allegations  
contained in this paragraph.

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**PARTIES**

2. Answering the section identified as “PARTIES” at p. 1:27-28, this answering Defendant admit.

3. Answering the section identified as “PARTIES” at p. 2:1-5, this answering Defendant lacks sufficient information or knowledge to enable it to answer the allegations contained in this paragraph, and basing its denial on this ground, generally and specifically denies all allegations contained in this paragraph.

**JURISDICTION**

4. Answering the section identified as “JURISDICTION” at p. 2:6-14, this answering Defendant contends said paragraph contain conclusions of law and not averments of fact for which a response is required, but insofar as a response is required, Defendant lacks sufficient information or knowledge to enable it to answer the allegations contained in this paragraph, and basing its denial on this ground, generally and specifically denies all allegations contained in this paragraph.

**VENUE**

5. Answering the section identified as “VENUE” at p. 2:15-24, this answering Defendant contends said paragraph contain conclusions of law and not averments of fact for which a response is required, but insofar as a response is required, Defendant lacks sufficient information or knowledge to enable it to answer the allegations contained in this paragraph, and basing its denial on this ground, generally and specifically denies all allegations contained in this paragraph.

**FACTUAL ALLEGATIONS**

6. Answering the section identified as “FACTUAL ALLEGATIONS” at p. 3:1-27, this answering Defendant lacks sufficient information or knowledge to enable it to answer the allegations contained in these paragraphs, and basing its denial on this ground, generally and specifically denies all allegations contained in these paragraphs.

7. Answering the section identified as “FACTUAL ALLEGATIONS” at p. 4:1-23, this answering Defendant lacks sufficient information or knowledge to enable it to answer the allegations contained in these paragraphs, and basing its denial on this ground, generally and specifically denies all allegations contained in these paragraphs.

**CAUSES OF ACTION**

**Federal Constitution**

8. Answering the section identified as “CAUSES OF ACTION Federal Constitution” at p. 5:2-22, this answering Defendant lacks sufficient information or knowledge to enable it to answer the allegations contained in these paragraphs, and basing its denial on this ground, generally and specifically denies all allegations contained in these paragraphs.

Second Cause of Action  
Violation of Fourth Amendment  
(all defendants)

9. Answering the section identified as “Second Cause of Action Violation of Fourth Amendment” at p. 5:24-p.6:9, this answering Defendant lacks sufficient information or knowledge to enable it to answer the allegations contained in these paragraphs, and basing its denial on this ground, generally and specifically denies all allegations contained in these paragraphs.

Third Cause of action  
Illegal Detention  
(Against All Defendants)

10. Answering the section identified as “Third Cause of action Illegal Detention” at p. 6:10-20, this answering Defendant lacks sufficient information or knowledge to enable it to answer the allegations contained in these paragraphs, and basing its denial on this ground, generally and specifically denies all allegations contained in these paragraphs.

**State Torts**

Fourth Cause of action  
Battery  
(against all defendants)

11. Answering the section identified as “Fourth Cause of action Batter” at p. 6:21-7:3, this answering Defendant lacks sufficient information or knowledge to enable it to answer the allegations contained in these paragraphs, and basing its denial on this ground, generally and specifically denies all allegations contained in these paragraphs.

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Fifth Cause of action  
Negligence  
(against all defendants)

12. Answering the section identified as “Fifth Cause of action Negligence” at p. 7:4-16, this answering Defendant lacks sufficient information or knowledge to enable it to answer the allegations contained in these paragraphs, and basing its denial on this ground, generally and specifically denies all allegations contained in these paragraphs.

Seventh [SIC] Cause of action  
Trespass to Land  
(Against all defendants)

13. Answering the section identified as “Seventh<sup>1</sup> Cause of action Trespass to Land” [SIC] at p. 5:2-22, this answering Defendant lacks sufficient information or knowledge to enable it to answer the allegations contained in these paragraphs, and basing its denial on this ground, generally and specifically denies all allegations contained in these paragraphs.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Based on information and belief, at all times mentioned in the Complaint, any individual employee of Defendant was acting in good faith and is entitled to qualified immunity for the claims asserted pursuant to 42 U.S.C section 1983, which inures to the benefit of the entity.

**SECOND AFFIRMATIVE DEFENSE**

Based on information and belief, Defendant alleges that Plaintiff had a duty to exercise due care but failed to do so by which Defendant allege that Plaintiff was himself guilty of comparative negligence or fault due to his failures.

**THIRD AFFIRMATIVE DEFENSE**

As to each state law claim for relief, Defendant allege, based on information and belief, that all acts and omissions alleged in the Complaint fall within the immunities and defenses and all rights granted by virtue of provisions of the California Government Code sections 815, 815.2, 820.4, 820.8. and 821.8.

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<sup>1</sup> Plaintiff omits a “sixth” cause of action.

1 FOURTH AFFIRMATIVE DEFENSE

2 Damages for non-economic losses cannot exceed the amount specified in Civil Code section  
3 3333.2.

4 FIFTH AFFIRMATIVE DEFENSE

5 Based on information and belief, Defendant alleges Plaintiff failed to exercise reasonable  
6 diligence so as to mitigate the damages, if any, alleged in the Complaint and the resultant damages, if  
7 any, were directly and proximately caused by the failure, neglect, and refusal of Plaintiff to exercise  
8 reasonable diligence and effort to mitigate the damages alleged.

9 SIXTH AFFIRMATIVE DEFENSE

10 Plaintiff freely and voluntarily assumed the risk of injury and damage alleged in this action with  
11 full knowledge and appreciation of the magnitude thereof.

12 SEVENTH AFFIRMATIVE DEFENSE

13 Based on information and belief, Defendant alleges Plaintiff wrongfully, unlawfully and  
14 maliciously made and threatened an assault and battery upon others and provoked the alleged affray, and  
15 individual Defendant used no more than reasonable and necessary force in defense of himself, his  
16 person, others, or property.

17 EIGHTH AFFIRMATIVE DEFENSE

18 As to each state law claim for relief, Plaintiff's claims, and each of them, are barred by the  
19 provisions of California Penal Code section 834a.

20 NINTH AFFIRMATIVE DEFENSE

21 As to all state law claims for relief, based on information and belief, Plaintiff failed to comply  
22 with the requirements of California Government Code section 900 et seq., i.e. the California  
23 Government Tort Claims Act.

24 TENTH AFFIRMATIVE DEFENSE

25 As to all state law claims for relief, based on information and belief, Defendant alleges that  
26 Plaintiff's Complaint is barred by the doctrine of unclean hands.

27 ELEVENTH AFFIRMATIVE DEFENSE

28 Plaintiff's claims for relief, and each of them, against Defendants are barred by the doctrine set

1 forth in Heck v. Humphrey, 512 U.S. 477 (1994) and its progeny.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Defendant prays for judgment as follows:

- 4 1. That Plaintiff's action be dismissed;
- 5 2. That Plaintiff take nothing by way of his Complaint;
- 6 3. That Defendant be awarded its costs of suit, including attorney's fees; and
- 7 4. For such other relief as the Court deems proper.

8 Dated: January 17, 2024

9 PORTER SCOTT  
A PROFESSIONAL CORPORATION

10 By /s/ John R. Whitefleet  
11 Carl L. Fessenden  
12 John R. Whitefleet  
13 Attorneys for Defendant

14 **DEMAND FOR JURY TRIAL**

15 Defendant hereby demands a trial by jury in the above-entitled action as provided by the Seventh  
16 Amendment to the United States Constitution and Rule 38 of the Federal Rules of Civil Procedure.

17  
18 Dated: January 17, 2024

19 PORTER SCOTT  
A PROFESSIONAL CORPORATION

20 By /s/ John R. Whitefleet  
21 Carl L. Fessenden  
22 John R. Whitefleet  
23 Attorneys for Defendant